IN THE HIGH COURT OF PUNAJB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 12664 of 2006
Date of Decision: December 06, 2007

Lt. Col. Youdhvir Singh ..... Petitioner

versus

Union of India and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE MOHINDER PAL

PRESENT: Shri Sudhir Mittal, Advocate for the petitioner.

Shri Kamal Sehgal, Advocate for the respondents

HEMANT GUPTA, J.

The petitioner, Lt. Col Youdhvir Singh, has filed the present writ petition challenging the order dated 27.07.2006, Annexure P-16, whereby the petitioner was ordered to be attached for further disciplinary proceedings i.e., for giving false evidence on oath.

The brief facts which led to the issuance of communication dated 27.07.2006, Annexure P-16, are that a Court of Inquiry was convened on 19.12.2005 to investigate the circumstances under which one Col. K.D. Singh, CO 1 HORSE, sustained injuries of severe nature on 5.12.2005. By another order dated 8.1.2006, another Court of Inquiry was convened for the same purpose. Still further, vide order dated 7.4.2006, another Court of Inquiry was convened again for the same

purpose. The petitioner is a witness who appeared in such Court of Inquiry which was convened to investigate the circumstances of serious injuries suffered by Col. K.D. Singh. It is the stand of the respondents that first Court of Inquiry was cancelled due to technical reason and second Court of Inquiry remained inconclusive. On the basis of third Court of Inquiry vide Annexure P-8, it was, inter alia, decided to initiate disciplinary proceedings against the petitioner for giving false evidence on oath.

On such conclusion, summary of evidence was conducted and after examining summary of evidence, it was decided to convene General Court Martial against the petitioner. The challenge in the present writ petition is to the initiation of Inquiry proceedings and subsequent action thereto against the petitioner.

The learned counsel for the petitioner has vehemently argued that the conclusion of Court of Inquiry recorded against the petitioner contravenes the statutory provisions and, thus, on the basis of such conclusion, the petitioner cannot be proceeded against and, thus, entire process of initiation of disciplinary proceedings against the petitioner is illegal, without jurisdiction and, thus, not sustainable.

Three-fold arguments have been raised by the learned counsel for the petitioner in support of his case. The first being that in terms of Rule 179 (5) of the Army Rules, 1954 (hereinafter to be referred as "the Rules"), the Court of Inquiry which has been once constituted can only be ordered to be reconvened as often as the officer who convened the Court may direct for further inquiry but different Court of Inquiry with different set up of members cannot be constituted. Secondly, Rule 180 of the Rules provides that in case any inquiry affects the character or military reputation

of a person subject to the Act, full opportunity is required to be afforded to such person of being present throughout the inquiry and of making any statement and to cross-examine the witnesses. It is contended that since the character and military reputation of the petitioner is being affected during the course of inquiry but the petitioner has not been given any opportunity so as to examine the witnesses in his presence and to cross-examine the same, therefore, Rule 180 of the Rules stands breached. Lastly, it is argued that copies of the deposition of the witnesses in the first and second Court of Inquiry have not been supplied to the petitioner. The witnesses who have deposed in the first and second Court of Inquiry have been examined again in the third Court of Inquiry, therefore, non supply of the statements of the witnesses prejudiced the claim of the petitioner for fair inquiry.

Controverting the said argument, Shri Kamal Sehgal, learned counsel for the respondent, has argued that the Court of Inquiry convened was not against the petitioner. It was, in fact, convened against Col. K.D. Singh. It was on the basis of the deposition received during the course of inquiry, it was found that it was the petitioner who has given false evidence on oath and, thus, it was decided to proceed against the petitioner. It is contended that de hors of Court of Inquiry, the authorities are within jurisdiction to initiate the proceedings against the petitioner. Reliance is placed upon **Lt. Col. Prithi Pal Singh Bedi and another vs. Union of India and others, AIR 1982 SC 1413 and Major General Inder Jit Kumar vs. Union of India and others, 1998 (1) Recent Services Judgement 656 SC .**

A perusal of communications, Annexures P-2 and P-3 dated 19.12.2005 and 8.1.2006, would show that the Court of Inquiry was

convened against Col. K.D. Singh. The petitioner is a witness in the first and second Court of Inquiry. It was on the basis of deposition in the third Court of Inquiry, it was concluded that the petitioner has given a false statement on oath. With that background, Rule 177 of the Rules comprising in Chapter VI of Army Rules are required to be examined. Rule 177(1) of the Rules contemplate convening a Court of Inquiry to collect evidence with regard to any matter which may be referred to them. The matter referred to such Court of Inquiry was sustaining of injuries by Col. K.D. Singh on 5.12.2005. Therefore, the Court of Inquiry was not constituted to examine the conduct of the petitioner of giving false evidence on oath. Hon'ble Supreme Court in **Lt. Col. Prithi Pal Singh Bedi's case (supra)** has held that Rule 186 of the Rules cannot be construed to mean that whenever or wherever in any inquiry in respect of any person subject to the Act his character or military reputation is likely to be affected setting up of a Court of Inquiry is a sine qua non. Rule 180 of the Rules makes it obligatory that whenever a Court of Inquiry is set up and in the course of inquiry character or military reputation of a person is likely to be affected then such person must be given full opportunity to participate in the proceedings of such Court of Inquiry. In view of the said interpretation of Rule 180 of the Rules, we are of the opinion that the proceedings against the petitioner can be initiated without convening the Court of Inquiry against the petitioner and, therefor, it is not open to the petitioner to allege infraction of Rule 180 of the Rules when the Court of Inquiry was not convened against the petitioner. It may be noticed that Major Sandeep Ahlawat, another officer who has appeared as a witness in the Court of Inquiry against Col. K.D. Singh, has requested for giving an opportunity to participate in the Court of

Inquiry in terms of the Rule 180 of the Rules. In reply to Major Ahlawat, it was pointed out that from the deposition of initial witnesses in the Court, it was found that the presence of the officer over whom Rule 180 of the Rules was invoked disturbs and inhibits the deposing witnesses, therefore, it was decided to record the statement of the witnesses in the absence of person over whom Rule 180 of the Rules is invoked and thereafter, the officer will be will be brought in and made to hear/ read the statements of the witnesses in full, given time to prepare questions and cross-examine them. The person who is under Rule 180 of the Rules would thereafter satisfy himself with the statements as well as questions, answers and sign the statements. However, the petitioner has not made any grievance during the course of Court of Inquiry convened against Col. K.D. Singh. In view of the said fact, we do not find that evidence in the Court of Inquiry was required to be recorded in the presence of the petitioner and the petitioner was required to be given opportunity to cross-examine the witnesses. It is not disputed by the learned counsel for the petitioner that, in fact, the petitioner was present at the time of cross-examination of the witnesses and, in fact, offered opportunity to cross-examine the witnesses examined in the third Court of Inquiry. The grievance of the petitioner is that examination-in-chief of certain witnesses was not recorded in his presence. It is, thus, contended that the statements recorded in the absence of the petitioner violates the principles of natural justice and, in fact, witnesses have been tutored. However, we do not agree with the arguments raised by the petitioner. Once opportunity has been given to the petitioner to cross-examine the witnesses after going through the statements, it cannot be said that any principle of natural justice has been violated. Keeping in view the fact that inquiry is

against the senior officer and the witnesses are of lower rank of the army, the procedure adopted cannot be said to be unfair and illegal in any manner.

The argument that the Court of Inquiry cannot be convened with change of members is again without any merit. Firstly, the Court of Inquiry convened is not against the petitioner. A bare reading of Rule 175(5) of the Rules does not suggest that Court of Inquiry has to comprise the same members. In the present case, it has been found that the first Court of Inquiry was cancelled as the Presiding Officer of the Court of Inquiry has to be senior to the officer charged. That was not so in the first Court of Inquiry and, therefore, the same was cancelled, whereas the second Court of Inquiry remained inconclusive. Therefore, it cannot be said that convening of Court of Inquiry vide Annexure P-8 in any way violates the provisions of the Army Rules.

Lastly, the argument raised by learned counsel for the petitioner is that copies of statements of witnesses recorded in the earlier first and second Court of Inquiry were not supplied is again without any merit. In view of the facts explained above, the first Court of Inquiry was not properly constituted. Therefore, even the statements made before the said authority would not be relevant. The second Court of Inquiry was not concluded in any case. It is also pointed out that in the first Court of Inquiry, there was no cross-examination of the witnesses, whereas second Court of Inquiry remains inconclusive and, therefore, the statements recorded in such inquiry are not relevant. In any case, on the basis of evidence before the Court of Inquiry, further disciplinary proceedings have been initiated against the petitioner. The petitioner has the right to lead evidence and to cross-examine the witnesses as may be examined by the respondent.

Therefore, at this stage of the proceedings, we do not find any flagrant violation of the Rules or inherent lack of jurisdiction which may warrant quashing of proceedings.

Consequently, we do not find any merit in the present writ petition. Dismissed.

(HEMANT GUPTA)
JUDGE

06.12.2007
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(MOHINDER PAL)
JUDGE